

## Indemnification and Insurance

### Section 9.01. Indemnification.

(a) General: The Corporation shall indemnify and hold harmless its present and former Directors and Officers to the fullest extent permitted by law, subject to the provisions of this Section 9.01.

(b) Who may be indemnified: "Indemnitee"<sup>11</sup> means any person who was, is, or is threatened to be made a defendant or respondent to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative and whether formal \_ or informal (collectively, a "Proceeding"), because he or she is or was: (1) a Director or Officer; or (2) while a Director or Officer, serving at the written request of the Corporation as a director, officer, manager, partner, trustee, employee or agent of another entity or employee benefit plan. An audit or evaluation by the Corporation's Office of Inspector General is not a Proceeding within the meaning of this Section 9.01. A person who is a witness or a subject of an internal, non-criminal, administrative investigation or inquiry conducted by the Corporation or its Office of Inspector General or the U.S. Department of Transportation's Office of Inspector General shall not be entitled to indemnification or advancement of expenses under this Section 9.01 with respect to such investigation or inquiry.

(c) Standard of conduct To be eligible for indemnification, the Indemnitee shall have acted (i) in the case of conduct in an official capacity, in good faith and in a manner he or she reasonably believed to be in the best interests of the Corporation; and (ii) in the case of conduct outside of official capacity, in good faith and in a manner he or

she reasonably believed to be not opposed to the best interests of the Corporation.

In addition, in the case of criminal proceedings, the Indemnitee must not have had reasonable cause to believe that his or her conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not by itself be determinative or create a presumption that the Indemnitee did not meet the standard of conduct set forth in this Section 9.01(c).

(d) Liabilities for which the Corporation will indemnify: Subject to the requirement of Section 9.01(c) and the other terms and conditions of this Section 9.01,  
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the Corporation shall indemnify an Indemnitee for the following:

1. Expenses {including attorneys' fees}, liabilities and other losses suffered such as judgments, decrees, fines, and penalties incurred by the Indemnitee in connection with a Proceeding, except that if the Proceeding was commenced by the Indemnitee, the Corporation shall be required to indemnify and to advance expenses only if the Proceeding was authorized by the Board. Notwithstanding the foregoing, the Corporation shall indemnify an Indemnitee for any expenses incurred in bringing a Proceeding against the Corporation to enforce such Indemnitee's rights to indemnification or advancement under this Section 9.01 provided such Proceeding is resolved (by judgment or order of a court, or by settlement with the Corporation) in favor of the Indemnitee.

2. Amounts to be paid in settlement of Proceedings, if approved

in writing by the President or General Counsel in advance of  
settlement, such approval not to be unreasonably withheld.

3. The Corporation shall not be liable under this Section 9.01 to make any  
payment in connection with any claim made against an Indemnitee to the extent  
such Indemnitee has otherwise received payment (under any insurance policy  
procured under Section 9.02 or otherwise) of the amounts otherwise payable  
as indemnification or advancement of expenses hereunder for such claim.

4. If the Corporation indemnifies an Indemnitee, then the Corporation shall be  
subrogated to the extent of such payment to any right of recovery that  
Indemnitee may have, and that Indemnitee, as a condition of receiving  
indemnification from the Corporation, shall execute all documents and do all  
things that the Corporation may deem necessary or desirable to perfect such  
right of recovery (including, without limitation, the execution of such  
documents necessary to enable the Corporation effectively to enforce any  
such recovery).

5. Notwithstanding any provision in this section 9.01 to the contrary, (A) nothing herein  
shall preclude any indemnification or advancement of expenses ordered by a court  
pursuant to Section 29-306.54 of the Act and (B) unless otherwise ordered

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by a court of competent jurisdiction, the Corporation shall not indemnify an Indemnitee (i) in connection with a Proceeding brought by or in the right of the Corporation, except for expenses incurred in connection with such Proceeding if it is determined that the Indemnitee has met the standard of conduct set forth in Section 9.01(c), or (ii) with respect to conduct for which the Indemnitee was adjudged liable on the basis of receiving a financial benefit to which the Indemnitee was not entitled.

- (e) Procedure: The determination whether an Indemnitee is entitled to indemnification shall be made either: (i) if there are two or more "Qualified Directors" (as such term is defined in the Act), by the Board by a majority vote of all the Qualified Directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more Qualified Directors appointed by such a vote; or (ii) by special legal counsel selected (A) in the manner prescribed in clause (i) or (B) if there are fewer than two Qualified Directors, by the Board, in which selection Directors who are not Qualified Directors may participate; or (iii) by the shareholders, in each case in accordance with the Act.
- (f) Advancement of expenses: The Corporation shall advance or reimburse the expenses of an Indemnitee actually and reasonably incurred in connection with a Proceeding before the final disposition of such Proceeding if such Indemnitee delivers to the Corporation (A) a written affirmation of the Indemnitee's good faith belief that the relevant standard of conduct described in Section 9.01(c) has been met and (B) a
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- written undertaking of the Indemnitee to repay any funds advanced if the Indemnitee is not entitled to mandatory indemnification under Section 29-306.52 of the Act and it is ultimately determined that the Indemnitee has not met the relevant standard of conduct described in Section 9.01(c) or is otherwise ineligible for indemnification under the Act.
- (g) Employees: The Corporation shall indemnify, hold harmless and advance reasonable expenses to its employees acting within the scope of their duties

- (h) Agents: The Corporation may indemnify and advance expenses to its present and former agents designated by the President or the General Counsel as entitled to indemnification and/or advancement of expenses. Any such indemnification or advancement of expenses shall be on such terms and conditions as may be established from time to time by the Corporation.
- (i) Non-exclusivity: The provisions of this Section 9.01 are adopted pursuant to Sections 29-306.50-29.306.59 of the Act, and are intended to provide indemnification and advancement rights to the full extent permitted by the Act, subject to the terms of this Bylaw. The rights this Bylaw confers on any Indemnitee are not exclusive of any other rights which the Indemnitee may have under law, the Articles of Incorporation, agreements, insurance, resolution of the Board or shareholders or otherwise. If the Indemnitee is entitled to indemnification under this Bylaw because of his or her serving at the request of the Corporation as a director, officer, manager, partner, trustee, employee or agent of another business enterprise, the Corporation's obligation to indemnify as specified in this Bylaw shall be reduced by any amount the

Indemnitee collects as indemnification or advancement of expenses from the other business enterprise.

- (j) Survival: If any provision of this Section 9.01 is held by a Court to be unenforceable, the remainder of the provisions shall remain in effect, and the Corporation shall indemnify and advance expenses to each Indemnitee to the full extent permitted by any applicable portion of this Section 9.01 that shall not have been held to be unenforceable, or by other applicable law or contract. The rights conferred in this Section 9.01 shall continue as to a person who has ceased to be a Director or Officer and shall inure to the benefit of the heirs, executors and administrators of such a person. Any repeal or modification of any provision of this Section 9.01 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

(k) Implementation: The President shall promulgate any necessary or  
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appropriate policy to implement this Section 9.01, including any rights to  
indemnification or advancement of expenses authorized by Section 9.01(g). The  
Board shall approve any such implementing policy.